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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0053]

Nationally Recognized Testing Laboratories; Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA issues a final policy for transitioning to the termination of the Satellite Notification and Acceptance Program.

DATES: The policy OSHA finalizes in this notice is issued on [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration; telephone: (202) 693-2110; email: robinson.kevin@dol.gov. OSHA's webpage includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

SUPPLEMENTARY INFORMATION:

I. Background

A. Nationally Recognized Testing Laboratories (NRTL) Program

Many of OSHA's safety standards require employers to use products tested and certified as safe (e.g., 29 CFR 1910, subpart S). In general, testing laboratories, and not employers, perform the required testing and certification. To ensure that the testing and certification performed on products is appropriate, OSHA implemented the NRTL Program. This program establishes the criteria that a testing laboratory must meet to achieve, and retain, NRTL recognition.

OSHA recognition of a NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7, the regulatory provision containing the requirements an organization must meet to become a NRTL and retain NRTL status. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within the organization's scope of recognition, and is not a delegation or grant of government authority. Recognition under the NRTL Program, therefore, enables employers to use products approved by NRTLs to meet OSHA standards that require product testing and certification.

Each NRTL is approved for a scope of recognition, which identifies: (a) the type of products the NRTL may approve; and (b) the NRTL's "recognized sites." The requirements for NRTL recognition are outlined in the NRTL Program Regulation at 29 CFR 1910.7 and Appendix A to that regulation.

B. NRTL Program Directive

The NRTL Program Directive sets forth OSHA policies, procedures, and interpretations that supplement and clarify the NRTL Program regulation, 29 CFR 1910.7 and Appendix A (NRTL Program Policies, Procedures and Guidelines, CPL 01-00-004, available at https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf). OSHA recently revised the NRTL Program Directive, on October 1, 2019.

The revised NRTL Program Directive contains a revised definition of “recognized site.” To be recognized, “a site must be administratively and operationally controlled by the NRTL and must perform at least one of the following functions: testing and inspection (and/or accepting test data or inspections), performing reviews, or making certification decisions with the NRTL management system” (NRTL Program Directive, Annex C). In revising the definition, OSHA eliminated ownership requirements contained in the prior definition of recognized site (NRTL Program Directive Ch. 1.IX.D). Thus, to be a recognized site, the site no longer has to be owned by the NRTL.

Prior to issuing the revised NRTL Program Directive (CPL-01-004), OSHA permitted NRTLs to use a number of different supplemental programs in order to use the services of other facilities to test and certify products used in the workplace (60 FR 12980, 74 FR 923). One of these supplemental programs was Supplemental Program 10, Satellite Notification Acceptance Program (SNAP). SNAP was implemented on May 11, 2009 (74 FR 923), and permitted NRTLs to perform certain functions to support testing and certification operations at “SNAP sites.” Under SNAP, a NRTL had to have administrative and operational control over the NRTL’s SNAP sites but ownership by the NRTL was not necessary. Thus, the majority of SNAP sites could not be “recognized sites” because of the ownership requirements that were then contained in the definition of recognized sites in the old NRTL Directive (i.e., a majority of the sites could not be “recognized sites” because they were not owned by the NRTLs).

OSHA terminated all the supplemental programs, including SNAP, in the revised NRTL Program Directive (Ch. 1.IX.B, D). SNAP is no longer necessary because the revised definition of “recognized site” permits OSHA to recognize sites that are administratively and operationally controlled by the NRTL but not necessarily owned by the NRTL. As OSHA noted in the revised Directive, NRTLs will now be able to apply to OSHA to make existing SNAP sites recognized sites (Id.).

OSHA Policies on Transition to the Revised NRTL Program Directive

After issuing the revised NRTL Program Directive, on October 19, 2019, OSHA issued a policy memorandum, *Revision to Policy Impacting the Revised Nationally Recognized Testing Laboratory (NRTL) Program, Policies, Procedures and Guidelines Directive* (the October 19, 2019 memorandum), which, among other things, provided that existing NRTLs could comply with the prior NRTL Program Directive, rather than the revised NRTL Program Directive, until September 30, 2020 (available at <https://www.osha.gov/dts/otpca/nrtl/NRTLDirectiveTransitionMemo.html>). Then, on July 2, 2020, OSHA issued another policy memorandum, *Extension of Some Deadlines to Comply with Revised Nationally Recognized Testing Laboratory (NRTL) Program Policies, Procedures and Guidelines Directive* (the July 2, 2020 memorandum), which, among other things, rescinded and replaced the October 19, 2019 memorandum, and extended by a year some of the dates by which existing NRTLs would need to comply with the revised NRTL Program Directive (available at <https://www.osha.gov/memos/2020-07-02/nationally-recognized-testing-laboratory-program/directive-compliance-extension>). The July 2, 2020 memorandum, provides in relevant part that:

- Existing NRTLs (each organization OSHA recognize[d] as a NRTL on October 1, 2019) must comply with the requirements of the revised NRTL Program Directive no later than October 1, 2021. Existing NRTLs may comply with the requirements of the prior NRTL Directive (CPL-01-00-003) until September 30, 2021.
- OSHA will evaluate pending expansion applications for existing NRTLs under the prior NRTL Program Directive to the extent final decisions on those applications are published in the *Federal Register* prior to October 1, 2021.

Assuming OSHA grants the expansion application, the NRTL will need to be in full compliance with the revised NRTL Program Directive, with respect to the

NRTL's entire scope of recognition, no later than October 1, 2021. For example, if OSHA publishes a final decision on an expansion application in the *Federal Register* on September 30, 2021, then the NRTL will have to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2021.

- OSHA will evaluate pending expansion applications for existing NRTLs under the revised NRTL Program Directive to the extent final decisions on those applications are published in the *Federal Register* on or after October 1, 2021. Depending on the status of the application, OSHA may, in the discretion of the agency, waive certain fees associated with the application to the extent accrual of those fees are due solely to OSHA's transition to the revised NRTL Program Directive. Assuming OSHA grants the expansion application, the NRTL will need to be in compliance with the revised NRTL Program Directive with respect to the NRTL's expanded scope immediately (i.e., on the date the final decision on the expansion application is published in the *Federal Register*).
- Audits and assessments of existing NRTLs conducted on or after October 1, 2019, will be conducted under the revised NRTL Program Directive. However, until October 1, 2021, items that OSHA would normally note as nonconformances with the revised NRTL Program Directive requiring timely response and correction will be noted as observations or long term corrective actions. While such observations and long term corrective actions will not require a response and correction in connection with the relevant audit or assessment, existing NRTLs will need to comply with the revised NRTL Program Directive no later than October 1, 2021.

As OSHA stated in the July 2, 2020 memorandum, other than extending some of the dates by which existing NRTLs would need to comply with the revised NRTL Program

Directive, “the policies in [the July 2, 2020] memorandum are otherwise the same as those contained in the rescinded [October 19, 2019] memorandum.” As OSHA also stated, “any *Federal Register* Notice establishing OSHA policies for transition to the termination of the Satellite Notification and Acceptance Program (SNAP) will supersede the policies contained in [the July 2, 2020] memorandum, to the extent that there is a conflict.”

C. OSHA’s Proposed Policy for Transitioning to the Termination of SNAP

In a February 10, 2020 *Federal Register* Notice, OSHA proposed a policy for transitioning to SNAP termination (85 FR 7606 (available at https://www.osha.gov/sites/default/files/laws-regs/federalregister/2020-02-10_0.pdf)).

OSHA proposed this policy based on the recognition that immediate termination of SNAP might cause an undue burden on some NRTLs with existing SNAP sites, as well as on its goal of permitting a smooth transition to SNAP termination for NRTLs with existing SNAP sites (85 FR at 7608).

As stated in the February 10, 2020 *Federal Register* Notice, while OSHA was not required by the Administrative Procedures Act, 5 U.S.C. 551, et seq., to engage in notice and comment rulemaking procedures prior to the adoption and implementation of the proposed policy, OSHA requested public comment regarding the proposed policy in order to gain input and insight from interested parties. Comments were due to be submitted by March 11, 2020.

Under the proposed policy, SNAP would be entirely terminated one year after the date of publication of the *Federal Register* notice announcing OSHA’s final decision on this proposed policy. Prior to that time, if a NRTL with existing SNAP sites followed the proposed procedures described in the Notice, that NRTL could continue to perform SNAP activities at the NRTL’s existing SNAP sites (for a period, or periods, that would be established by the proposed policy, and ending no later than one year after the date of

publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy).

Finally, OSHA stated in the February 10, 2020 *Federal Register* Notice, that the policies proposed in the Notice would supersede the policies contained in the October 19, 2019 memorandum (discussed above), to the extent there was a conflict. OSHA also stated that, as of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA would reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP.

II. Final Decision Issuing Policy for Transitioning to the Termination of SNAP

In this notice, OSHA issues a final policy for transitioning to the termination of SNAP. The final policy is nearly identical to the policy proposed in the February 10, 2020 *Federal Register* Notice, with certain exceptions discussed below.

In proposing its policy, OSHA recognized that NRTLs might need more time to transition their existing SNAP sites to recognized sites than the year-long transition period (from October 1, 2019 to October 1, 2020) permitted by the October 19, 2019 memorandum, for complying with the revised Directive. Therefore, under the proposed policy, NRTLs that timely applied for scope expansion (i.e., to convert their existing SNAP sites to recognized sites) and met other conditions stipulated in the policy, would be permitted to continue performing SNAP activities at existing SNAP sites listed in their applications up to a full year after the date of publication of the *Federal Register* notice finalizing the policy (see sections 3.b and 10 of the proposed policy).

OSHA has decided to retain this time limit in the final policy. Therefore, under the final policy, NRTLs that timely apply for scope expansion and meet other conditions stipulated in the final policy will be permitted to continue performing SNAP activities at existing SNAP sites listed in their applications up to [INSERT DATE 365 DAYS

AFTER THE DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER] (see paragraphs 3.b and 11 of the final policy). This time limit slightly extends the extra time OSHA originally anticipated (up until October 1, 2021) when it published the proposed policy that existing NRTLs would need for a smooth transition of their SNAP sites to recognized sites. However, OSHA concludes the extra transition time permitted by the final policy is negligible.

Some of the other time limits in the proposed policy, if finalized, would have raised questions of fairness and consistency because OSHA rescinded the October 19, 2019 memorandum, and replaced it with the July 2, 2020 memorandum. When OSHA issued the proposed policy in February 2020, it envisioned all time limits in the proposed policy occurring after October 1, 2020, the date by which existing NRTLs needed to comply with the revised NRTL Program Directive pursuant to the October 19, 2019 memorandum. Therefore, when OSHA issued the proposed policy, it believed all time limits in the proposed policy would give NRTLs with existing SNAP sites extra transition time on top of the transition year already permitted by the October 19, 2019 policy. However, because OSHA extended the October 1, 2020 deadline by a year in the July 2, 2020 memorandum, certain time limits in the proposed policy, if finalized, would require existing NRTLs to cease performing SNAP activities at existing SNAP sites well before the new October 1, 2021 deadline. This would occur for some NRTLs even though they timely submitted all documents to OSHA (see sections 1.a, 1.c, and 2 of the proposed policy) and were actively seeking to convert their SNAP sites to recognized sites. Thus, for example, under the proposed policy, if a NRTL that timely submitted documents to OSHA did not meet one or more of the other preconditions of eligibility for the SNAP sites listed in its application for scope expansion, the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites listed in the application (see sections 2 and 5.b of the proposed policy).

OSHA concludes that it would be unfair to require a NRTL that timely submitted its documents to OSHA and is actively seeking to convert its SNAP sites to recognized sites to cease performing SNAP activities at the SNAP sites listed in its expansion application prior to September 30, 2021 (the last date existing NRTLs may comply with the requirements of the prior NRTL Directive pursuant to the July 2, 2020 memorandum). Therefore, the final policy permits such NRTLs to continue performing SNAP activities at existing SNAP sites listed in their applications until September 30, 2021.

There are different factors at play for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites, for example, because they withdrew an application for scope expansion or because OSHA denies an application for scope expansion (see sections 2, 5.c, 6, 7, 8, and 9 of the proposed policy). OSHA adopted the transition periods for existing NRTLs in the October 19, 2019 and July 2, 2020 memoranda, to permit NRTLs adequate time to transition from the prior NRTL Directive to the revised NRTL Directive. A NRTL that does not submit timely documents to OSHA or makes an affirmative decision to withdraw an application for scope expansion has signaled that it does not want to transition its SNAP sites to recognized sites. Furthermore, if OSHA denies an application for scope expansion, it will have concluded that the SNAP sites listed in the application do not have the capability to operate as NRTL-recognized sites, and there will be no further need for the NRTL to transition those sites to recognized sites. Permitting such NRTLs to continue performing SNAP activities at existing SNAP sites until September 30, 2021, would be contrary to the purpose of the October 19, 2019 and July 2, 2020 memoranda, and the final policy therefore retains proposed time limits for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites.

OSHA received three timely-filed comments in response to the February 10, 2020 *Federal Register* Notice. SGS North America (SGS) asserts that the proposed policy is contrary to the procedures in Appendix A to the NRTL Program Regulation because the Appendix requires OSHA to conduct an on-site assessment in connection with each application for conversion from a SNAP site to a recognized site. This is so, according to SGS, because “SNAP sites are largely monitored by the NRTL with limited oversight from OSHA,” and OSHA would therefore “award recognized site status based solely on administrative information submitted by the NRTL, without evaluating whether the SNAP site effectively and safely implements the operations, procedures, testing, and control programs included within these administrative materials” (OSHA-2007-0053-0012).¹

¹ Comments are available on www.regulations.gov under docket number OSHA-2007-0053. OSHA cites comments according to the document number they are given on www.regulations.gov.

OSHA disagrees with SGS's comment for several reasons. First, SGS ignores a key aspect of the proposed policy that clarifies that the policy is a simple restatement, and not a revision, of what is already required by Appendix A.² According to paragraph 3.a of the proposed policy, if a NRTL met all the preconditions of eligibility for a SNAP site, it would be entitled to "*Potential Streamlined Conversion*." As OSHA stated in the policy, this means simply that "[c]onsistent with Appendix A, OSHA would make determinations as to whether on-site reviews are necessary on a case-by-case basis." Thus, SGS is wrong that on-site reviews would not be "an expected part of the process" under the proposed policy. In individual cases, on-site reviews might very much be incorporated into OSHA's decision on an application.³

Second, SGS's claims are not ripe because, again, OSHA will be making determinations on whether it will conduct on-site reviews on a case-by-case basis. SGS will have a full and fair opportunity to submit comments in response to OSHA's preliminary determinations on other NRTLs' applications to convert SNAP sites to recognized sites according to the procedures in Appendix A to the NRTL Program regulation. If SGS believes that there is insufficient evidence to support another NRTL's application to convert a SNAP site to a recognized site, or that an on-site review is required for a particular application, it can raise those concerns at the appropriate time

² Because the proposed policy is merely a restatement of the procedures in Appendix A, SGS is wrong that the proposed policy, if finalized, would represent a substantive revision to Appendix A and that OSHA must therefore "engage in formal notice and comment rulemaking" under the Administrative Procedures Act, 5 U.S.C. 553, in connection with the proposed policy. For the same reason, SGS is also wrong that the proposed policy is inequitable and provides an unfair competitive advantage because it permits NRTLs to avoid the Appendix A requirements through "truncated" procedures. OSHA notes, moreover, that OSHA provided the public with notice in the *Federal Register* of, and an opportunity to comment on, the proposed policy. Therefore, even if the proposed policy were a substantive rule, as SGS asserts, OSHA would have met applicable requirements for notice and comment in 5 U.S.C. 553.

³ OSHA has replaced the term "*Potential Streamlined Conversion*" with the term "*Conduct of Onsite Assessments*" in paragraph 3.a of the final policy to clarify the purpose of the paragraph.

provided for by Appendix A.⁴ However, at the current time, SGS's claims are entirely speculative.

Third, SGS misunderstands Appendix A to the NRTL Program Regulation. Appendix A provides that OSHA "will act upon and process [an] application for expansion in accordance with subsection I.B. of th[e] appendix" (29 CFR 1910.7 App. A.II.B.2.a). Subsection I.B provides in relevant part that, in processing applications, "OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, as well as the applicant's administrative and technical practices" (29 CFR 1910.7 App. A.I.B.1.b). Thus, according to the Appendix, OSHA must, first and foremost, determine whether an on-site review is necessary in connection with a particular expansion application.

Contrary to SGS's assertion, OSHA will take into consideration the results of the prior audits it conducted of a SNAP site in determining whether an on-site review is necessary for that SNAP site. When OSHA implemented SNAP in 2009, it determined that OSHA audits of SNAP sites were necessary to maintain the integrity of the NRTL program (74 FR 923, 926 (Jan. 9, 2009)). While OSHA might not audit SNAP sites as often as recognized sites, OSHA's concludes that its history of directly auditing SNAP sites might render on-site review unnecessary in individual cases. And, again, as OSHA stated in the proposed policy (and states in the final policy), it will make such determinations on a case-by-case basis, and OSHA will simply not be "relying on the goodwill associated with a prior NRTL site to transfer those credentials to a new facility," as SGS maintains.⁵

⁴ When NRTLs apply to convert SNAP sites to recognized sites, the public will be made aware of which SNAP sites will potentially become recognized sites. SGS's concern about disclosure of this information is therefore misplaced.

⁵ Therefore, SGS is wrong when it asserts that the proposed policy is contrary to an April 21, 1993 OSHA letter of interpretation (available at <https://www.osha.gov/laws-regs/standardinterpretations/1993-04-21>).

It should also be noted that, when it implemented SNAP, OSHA took steps to ensure the independence of the NRTL's SNAP auditors from the SNAP sites themselves. As OSHA stated:

OSHA proposed that an NRTL's SNAP auditors must be in an organizational unit that is separate from the NRTL's operations, and that the unit must report directly to a senior executive of the NRTL. OSHA proposed this condition to ensure that SNAP auditors were independent of an NRTL's operational units, and that auditing units had authority to compel operational units to conform with the prescribed SNAP conditions. Two commenters opposed this condition. (Exs. OSHA-2007-0053-0007 and -0008.). The first commenter believed this condition was inappropriate because auditing units may report to a team of executives instead of one executive, while the second commenter noted that the executive structure envisioned in the proposal may not exist in many NRTL organizations. OSHA agrees with these comments, and revised the condition to specify that SNAP auditors cannot be under the control or direction of any SNAP site, and that auditors must report audit results from a SNAP site to the SNAP headquarters of the NRTL.

74 FR at 925. OSHA concluded at the time it implemented SNAP, and it reaffirms here, that such controls ensured the independence and integrity of internal SNAP audits. It is therefore entirely appropriate for OSHA to rely on prior audits of a SNAP site conducted by a NRTL (in addition to those conducted by OSHA) in determining whether on-site review is necessary in a given case. OSHA will, of course, review whether a NRTL implemented required controls for internal audits of SNAP sites as part of its determination whether on-site review is necessary in a particular case.

In addition, the proposed policy makes clear that OSHA will incorporate its own prior audits, a NRTL's prior audits, and other relevant evidence into its determinations of whether on-site review is necessary. As OSHA stated in paragraphs 1.g.ii and 1.g.iii of the proposed policy, to meet the preconditions of eligibility (and therefore be entitled to a special review by OSHA as to whether on-site review is necessary), a NRTL would need to submit to OSHA:

- ii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (e.g., by the NRTL) or externally (e.g., by OSHA or other accreditor)) in
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connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, any other entity, and (b) within the 30 months preceding the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy; [and]

iii. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy, (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances.

OSHA adopts these paragraphs as proposed and notes, moreover, that it maintains records of its prior audits of SNAP sites (including those that were conducted beyond the 30 months preceding the date of publication of this final policy) and will also take these records into account in making its determinations. As such, OSHA will base its case-by-case determinations of whether on-site reviews are necessary on relevant evidence that will enable it to make informed decisions.

Finally, SGS is wrong when it states that the proposed policy runs afoul of Appendix A because the Appendix provides that “OSHA may decide not to conduct an on-site review” in connection with an expansion application “where the substantive scope of the request to expand recognition is closely related to the current area of recognition” (29 CFR 1910.7 App. A.II.B.2.b). Contrary to SGS’s assertion, the cited provision should not be read in isolation. Again, the Appendix also provides that OSHA need only conduct on-site reviews “as necessary” to permit OSHA to make an informed decision on an application. In the context of an expansion application to convert SNAP sites to recognized sites, on-site reviews may not be necessary because, under the prior Directive, OSHA recognized NRTLs for SNAP. That such an application is closely related to the NRTL’s current area of recognition is evident from OSHA’s own audits, and the controls OSHA implemented to ensure the integrity of internal audits, of the NRTL’s SNAP sites.

If the application were not “closely related to the current area of recognition,” there would have been no need for OSHA to conduct these audits or implement these controls.⁶

Underwriters Laboratories LLC (UL) asserts that “there is no justification for a disruptively abrupt cessation of SNAP activities for any of the reasons in the *Federal Register* notice,” and that OSHA should instead require cessation of SNAP activities for all SNAP sites on a date certain and delete proposed time limits to the extent they would require immediate cessation of SNAP activities (OSHA-2007-0053-0014).

OSHA concludes UL’s concerns about the proposed policy’s time limits are, for the most part, addressed by the revisions to the proposed time limits in the final policy, as discussed above. Again, under the final policy, a NRTL that timely submits their SNAP conversion documents to OSHA, and is actively seeking to convert their SNAP sites to recognized sites, but does not meet one or more of the other preconditions of eligibility for the SNAP sites listed in the application for scope expansion, may continue performing SNAP activities at the SNAP sites listed in its expansion application until September 30, 2021.⁷

As also discussed above, there are different factors at play for NRTLs that do not timely submit their documents to OSHA and/or are not actively seeking to convert their SNAP sites to recognized sites. OSHA therefore disagrees with UL’s comment to the extent UL asserts that the final policy should allow these NRTLs to continue performing SNAP activities at SNAP sites beyond the time limits described in the proposed policy.

⁶ Therefore, SGS is also wrong that “the substantive scope” of an application to convert a SNAP site to a recognized site cannot be “closely related to the current area of recognition” because SNAP sites are not recognized sites.

⁷ UL suggests that, under current OSHA policy, “after the SNAP is fully terminated, . . . activities that are required to be performed by staff assigned to a Recognized site [] can be performed” at a site that is the subject of a site expansion application before OSHA rules on the application. OSHA emphasizes that UL is incorrect and this is not current OSHA policy.

UL also objects to paragraph 9 of the proposed policy, which addressed the effect of a final decision by OSHA on an application meeting the preconditions of eligibility. UL suggests that the paragraph be revised to require that a NRTL immediately cease performing SNAP activities at the SNAP sites listed in the application that were not approved to become recognized sites, and not merely those SNAP sites that met the preconditions of eligibility.

As discussed above, OSHA revised the proposed time limits in the final policy. It is therefore modifying the final policy accordingly (including the provision about which UL had concern).

UL objects to the precondition of eligibility that a NRTL include with its list of existing SNAP sites the date each SNAP site was approved by the NRTL. According to UL, the exact date is difficult to determine for older SNAP sites and this difficulty renders the 30 day timeframe to submit the list of existing SNAP sites unrealistic. Moreover, according to UL, there is “no need or value to know the specific date of approval.” Therefore, UL asserts the precondition should instead provide that NRTLs indicate “what SNAP sites have been approved for 5 or more years and the date of approval only for sites approved for less than 5 years.”

OSHA agrees with UL that NRTLs may have difficulty determining the exact dates they approved older SNAP sites. Therefore, the final policy provides that for each SNAP site listed, a NRTL must list the date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], the NRTL may state that that the SNAP site has been approved for 30 or more months, without listing the exact date of approval. The NRTL may meet this precondition of eligibility in its application for scope expansion (see paragraph 1.c) to the extent the precondition is not met in the NRTL’s list of existing SNAP sites.

UL asserts that OSHA should revise paragraphs 1.g.ii and 1.g.iii of the proposed policy, quoted above, to indicate that the “audits and information referenced in [these paragraphs] should only be audits and information pertinent to the activities required to be performed by staff assigned to Recognized sites.”

OSHA disagrees with this comment. The purpose of these paragraphs is to ensure that NRTLs provide OSHA with historical information about SNAP sites so that OSHA can make informed determinations on whether on-site reviews are necessary in individual cases and, ultimately, whether to grant NRTLs’ applications for expansion of recognition. OSHA concludes that the information proposed to be required by these paragraphs is necessary for OSHA to make such informed determinations and these paragraphs are included, as proposed, in the final policy.

UL objects to paragraph 10 of the proposed policy, which provided that “[a] NRTL would be required to cease performing SNAP activities at existing SNAP sites that were listed in the application and met the preconditions of eligibility one year after the date of publication of the *Federal Register* notice announcing OSHA's final decision on this proposed policy.” According to UL, “[t]he time period should be 24 months for OSHA to realistically process this one-time additional workload.”

OSHA disagrees with this comment and believes that the one-year time period will be sufficient to process the additional workload. However, OSHA notes that paragraph 12 of the final policy (like the proposed policy) provides for a potential extension of the SNAP Termination Date in appropriate circumstances.

Finally, UL makes several “general” assertions that go well beyond the scope of the proposed policy. First, UL asserts that OSHA should “abandon the location element of NRTL scopes” because “[e]xcept for laboratory testing, the idea that certification activities are performed at discrete physical locations is now an anachronism.” Second, UL asserts that, “[i]f OSHA continues to utilize a location element to the scope of

Recognition of NRTLs, a self-qualification option for locations for NRTLs continues to be needed” because a “NRTL that completes all certification work (except laboratory testing) via internet can quickly rent space, arrange for fast internet access at that space, and direct qualified staff to that space as a possible work location in a matter of weeks.” Third, UL asserts that “[i]f OSHA continues to utilize a location element in the scope of Recognition of NRTLs,” it should “document explicitly what NRTL activities are required to be performed by staff assigned to a Recognized site,” and not simply “what activities are allowed to be performed,” so that “NRTLs can know “whether existing SNAP sites need to be converted to Recognized sites or can, with needed changes to the activities performed by staff assigned to the site, simply become Unrecognized sites.”

The purpose of the proposed (and final) policy is to ensure a smooth transition from SNAP, which OSHA eliminated when it revised the NRTL Program Directive. UL’s “general” assertions appear to object to the revised Directive itself and not to the proposed policy. Therefore, the substance of UL’s “general” assertions are beyond the scope of this Notice.

Reynaldo Figueredo (OSHA-2007-0053-0013) comments that:

The proposed revision to the NRTL program Directive definition of a recognized site would removes the requirement that the site no longer has to be owned by the NRTL. This simplifies the process and eliminates the SNAP program. However, this change does not address the fundamental competency or technical testing and inspection capability at the site. With this change, the NRTL may select and "qualify" the site to perform testing and inspection functions. A key question is whether or not the NRTL is capable of assessing the site's personnel and equipment which is a different function from its NRTL responsibilities. We recommend that all testing and/or inspection sites be accredited by an accreditation body that is US based and is a signatory to the ILAC MRA. This is a normal activity that accreditation bodies perform on a daily basis.

Mr. Figueredo’s comment, like UL’s “general” assertions, appears to object to the revised Directive itself and not to the proposed policy. Therefore, the substance of this comment is beyond the scope of this Notice.

III. OSHA’s SNAP Transition Policy

With this *Federal Register* notice, OSHA issues this final policy for transitioning to the termination of SNAP. Pursuant to this final policy:

- This policy supersedes the policies contained in the July 2, 2020 memorandum (discussed above), to the extent there is a conflict.
- As of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA will reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP.
- OSHA implements the following policies for the conversion of existing SNAP Sites to Recognized Sites and the interim performance of SNAP activities at SNAP Sites:
 1. *Preconditions of Eligibility.* To meet the preconditions of eligibility, a NRTL must do all of the following:
 - a. Submit to OSHA a list of the NRTL's existing SNAP sites no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]. For each SNAP site listed, a NRTL must list the date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], the NRTL may state that the SNAP site has been approved for 30 or more months, without listing the exact date of approval. The NRTL may meet this precondition of eligibility in its application for scope expansion (see paragraph 1.c) to the extent the precondition is not met in the NRTL's list of existing SNAP sites.

- b. Not designate any new SNAP sites after submitting to OSHA the list of existing SNAP sites.
- c. Submit to OSHA an application for scope expansion (i.e., to convert existing SNAP sites to recognized sites) no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].
- d. Include in the scope expansion application a list of the SNAP sites the NRTL wants converted to recognized sites. The NRTL is permitted to include in the scope expansion application list only those SNAP sites the NRTL also included in the list of SNAP sites it submitted to OSHA by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].
- e. Specify that it wants the scope expansion application processed under the procedures described here.
- f. Submit to OSHA all required application fees as outlined in the Revised NRTL Schedule of Fees. See <https://www.osha.gov/dts/otpc/nrtl/nrtlfees.html>. The following fees must accompany the scope expansion application: \$2,490 for the Expansion application – Limited review; and \$2,490 for each site for which the NRTL seeks recognition. (Other fees would be invoiced as necessary (for example the \$3,180 fee for a *Federal Register* notice application, and fees for onsite assessments, if conducted)).

- g. At a minimum, submit to OSHA, for each SNAP site listed in the application, the following historical assessment records and supporting documentation:
- i. The NRTL functions performed at the SNAP site (e.g., testing, certification, audits of testing laboratories);
 - ii. The date the SNAP site was approved by the NRTL EXCEPT that, where a SNAP site has been approved for 30 months or more preceding [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], the NRTL may state that the SNAP site has been approved for 30 or more months, without listing the exact date of approval.
 - iii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (e.g., by the NRTL) or externally (e.g., by OSHA or other accreditor)) in connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, or any other entity, and (b) within the 30 months preceding [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER];
 - iv. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding [INSERT DATE OF PUBLICATION

OF THIS NOTICE IN THE FEDERAL REGISTER], (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances; and

- v. An organizational chart for the SNAP site identifying leadership and employees involved with NRTL-related work activities.

2. *Continued Performance of SNAP Activities at Existing SNAP Sites*

Contingent on Timely Submission of Documents.

- a. If a NRTL fails to timely submit to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], the NRTL must cease performing SNAP activities at all of the NRTL's existing SNAP sites on [INSERT DATE 31 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].
- b. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], but that list does not contain all of the NRTL's existing SNAP sites, the NRTL must cease performing SNAP activities at existing SNAP sites not contained in the list on [INSERT DATE 31 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].
- c. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER],

but does not submit to OSHA a timely application to convert the existing SNAP sites in the list to recognized sites by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], then the NRTL must cease performing SNAP activities at all of the NRTL's existing SNAP sites no later than [INSERT DATE 61 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

- d. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], and then submits to OSHA a timely application to convert only some of the existing SNAP sites in the list to recognized sites by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], then the NRTL must cease performing SNAP activities at SNAP sites that the NRTL did not list in the application no later than [INSERT DATE 61 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].
 - e. OSHA might allow for short extensions of these time limits, at the discretion of the agency, and if good cause is shown by the NRTL.
3. *Effect of Meeting the Preconditions of Eligibility.* If a NRTL meets all the preconditions of eligibility for a SNAP site, it is entitled to the following:
 - a. *Conduct of On-site Assessments.* OSHA typically performs on-site assessments in connection with site expansion requests. However, OSHA might, at the discretion of the agency, opt not to do so with respect to SNAP sites that meet the preconditions of eligibility.

Appendix A to the NRTL Program Regulation, 29 CFR 1910.7, provides that, in reviewing expansion applications, OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, and may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition. Consistent with Appendix A, OSHA will make determinations as to whether on-site reviews are necessary on a case-by-case basis.

- b. *Interim Performance of SNAP Activities at SNAP Sites.* NRTLs may continue performing SNAP functions at the SNAP sites that are listed in the NRTL's application and that meet the preconditions of eligibility, but only for the time period(s) permitted by these procedures.
4. *Effect of Not Meeting the Preconditions of Eligibility.* If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]), and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], this NRTL may continue performing SNAP functions at the SNAP sites that are listed in the NRTL's application that do not meet all or some of the other preconditions of eligibility, but only for the time period(s) permitted by these procedures. This NRTL must cease performing SNAP functions at these SNAP sites no later than September 30, 2021, to the extent these procedures do not otherwise address when SNAP functions

must cease for the NRTL. This will be the case even if OSHA does not issue a final decision on the NRTL's application by September 30, 2021.

5. *Review of Applications.*

- a. To the extent SNAP sites in an application meet the preconditions of eligibility, OSHA will review that application, or portion of application, in accordance with the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, the July 2, 2020 memorandum, discussed above, and these SNAP conversion procedures, to determine the capability of the SNAP site to operate as a NRTL-recognized site. OSHA will base this determination on the documentation submitted with the application, historical on-site assessments of the NRTL's SNAP Sites and SNAP Headquarters, and any other factors it deems relevant, including, for example, the conduct of an on-site assessment(s), if deemed necessary.
- b. In reviewing applications, or portions of applications, concerning SNAP sites that do not meet the preconditions of eligibility, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments. NRTLs should consult the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, and the July 2, 2020 memorandum, discussed above, for the procedures that OSHA would follow with respect to these SNAP sites. It should be noted that these NRTLs may be able to continue performing SNAP functions at these SNAP sites, but only in accordance with these procedures (see paragraphs 2 and 4 of these procedures).

6. *Opportunity to Respond (Discretionary) for NRTLs That Specify in Their Scope Expansion Applications That They Want Their Applications*

Processed Under the Procedures Described. Although a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER], the NRTL might not meet one or more of the other preconditions of eligibility for some or all of the SNAP sites listed in the application. For example, a NRTL might fail to submit to OSHA the required historical assessments or supporting documentation for one or more of the SNAP sites listed in an application. In addition, to make a determination on an application, OSHA might require further information or clarification, in addition to the information that would be required by the preconditions of eligibility. Therefore, after conducting a review of a scope expansion application in which a NRTL specifies that it wants the application processed under the procedures described (Precondition of Eligibility (e)), OSHA might, at the discretion of the agency, give the NRTL 15 days to provide clarification or missing information.

- a. If OSHA receives a timely response from the applicant (within 15 days), or a timely written request for an extension (within 15 days) and subsequent response within the time permitted for extension (if the request for extension is granted), OSHA will recommend a positive or negative finding on the application.
- b. Alternatively, OSHA will treat the application as a normal site expansion application, outside of these procedures, if the NRTL

requests in a timely-filed response that the application be treated as such. However, the NRTL may continue performing SNAP functions for those SNAP sites in accordance with these procedures (see paragraph 4 of these procedures).

- c. If OSHA does not receive a timely response, or a timely request for an extension and subsequent response within the time permitted for extension (if granted), it will consider the application withdrawn and the NRTL will be required to immediately cease performing SNAP activities at the SNAP sites listed in the application.

7. *Effect of a Negative Finding on an Application.* If a negative finding is issued, the NRTL will have an opportunity (a) to withdraw the application, (b) revise the application (for example, to remove from the application those sites OSHA staff consider non-compliant, or to indicate that OSHA should process the application as a traditional application for site expansion rather than under these procedures), or (c) request that the original application be forwarded to the Assistant Secretary for Occupational Safety and Health, as outlined in Appendix A to the NRTL Program regulation, 29 CFR 1910.7.

8. *Effect of Withdrawal of an Application.* If the application is withdrawn by the applicant or considered withdrawn by OSHA, the NRTL must immediately cease performing SNAP activities at the SNAP sites that were listed in the withdrawn application. While the NRTL could still apply to have these sites included in the NRTL's scope of recognition, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications. The NRTL may

not resume the conduct of SNAP activities at these sites if it files a new application for scope expansion.

9. *Effect of the Revision of an Application.* If the applicant revises the application to remove from the application individual SNAP sites listed in the application, the NRTL will be permitted to continue to perform SNAP activities only at those SNAP sites that remain in the application. The applicant must immediately cease performing SNAP activities at SNAP sites no longer in the application. While the NRTL could still apply for recognition of any sites removed from the application, OSHA will follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications. The NRTL may not resume the conduct of SNAP activities at these sites if it files a new application for scope expansion.
10. *Effect of Final Decision on Application.* Once a final decision is made regarding the capability of a SNAP site to operate as a NRTL-recognized site, this decision will be published in the *Federal Register*, upon which time the NRTL must immediately cease performing SNAP activities at the SNAP sites listed in the application that were not approved to become recognized sites.
11. *Termination of the SNAP Entirely.* A NRTL must cease performing SNAP activities at existing SNAP sites that are listed in the application and meet the preconditions of eligibility no later than [INSERT DATE 365 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER]. This will be the case even if OSHA does not issue a final decision on the NRTL's application by that date. The SNAP

will be entirely terminated on [INSERT DATE 365 DAYS AFTER DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

12. *Potential Extension of SNAP Termination Date.* OSHA might, at the discretion of the agency, extend the SNAP termination date. OSHA notes, however, that it will not extend the termination date because final decisions on some applications cannot be issued on a streamlined basis. OSHA is not able to issue a final decision on a streamlined basis, for example, if it determines that it needs to conduct an on-site assessment or a negative finding is issued in connection with an application. An extension of the SNAP termination date based on these time-intensive issues is not justified.

Disclaimer: This policy is not a standard, regulation, or any other type of substantive rule. No statement in this policy should be construed to require the regulated community to adopt any practices, means, methods, operations, or processes beyond those which are already required by the Occupational Safety and Health Act of 1970 (OSH Act) (29 USC § 668) or standards and regulations promulgated under the OSH Act. This document does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8-2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on November 17, 2020.

Loren Sweatt,
Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

